

uphold the franchising authority's decision absent a finding that the decision was arbitrary and capricious.

A franchising authority's decision should remain in effect pending resolution of such disputes. Otherwise, cable operators will have an incentive to file frivolous rate complaints in an effort to undermine the regulatory process and prolong the effective date of any rate ordered by a franchising authority. It would be more administratively feasible and fair for the Commission to protect a cable operator by allowing it to recover any loss resulting from an erroneous decision through short-term rate increases above the rate increase sought by a cable operator. If the Commission determines that the franchising authority's rate decision is erroneous, the complaint should be remanded to the franchising authority for further review, subject to instructions from the Commission as to how to cure any infirmities in the franchising authority's initial decision.³⁵

³⁵ The Commission does not have the regulatory authority to establish the rate itself in such circumstances. In franchise areas where the franchising authority is seeking certification or is certified, Congress expressly limited the Commission's right to exercise jurisdiction in such franchise areas only where it has revoked or denied a certification. See Section 623(a)(6). Rate disputes handled by the Commission pursuant to Section 623(b)(5)(B) are not disputes that are intended to be handled pursuant to a revocation proceeding under Section 623(a)(6).

7. Franchising Authorities May Require the Placement of PEG Channels on Other than the Basic Tier.

Local Governments agree with the Commission that Congress intended that cable operators provide a tier of basic service³⁶ that includes must-carry signals, other

³⁶ Local Governments do not believe the 1992 Cable Act prohibits a cable operator from providing multiple tiers of basic cable service. The Communications Act states that the "term 'basic cable service' means any service tier which includes the retransmission of local television broadcast signals." 47 U.S.C. § 522(2). The 1992 Cable Act did not alter or delete this definition of "basic cable service." Congress clearly was aware that this definition existed and used that precise term to define the scope of a franchising authority's power to regulate basic cable service. Section 623(a)(2) states, in relevant part, that "[i]f the Commission finds that a cable system is not subject to effective competition . . . the rates for the provision of basic cable service shall be subject to regulation by a franchising authority" In addition, as noted by the Commission, the United States Court of Appeals has held that a tier of service that incorporates the basic cable service tier is itself a basic cable service tier. American Civil Liberties Union v. FCC, 823 F.2d 1554, 1570 (D.C. Cir. 1987) (per curiam) (reviewing Commission's rules implementing Cable Communications Policy Act of 1984; striking down Commission's definition of basic service). Neither the 1992 Cable Act nor its legislative history indicates an intent to overturn this decision and to amend the definition of "basic cable service," and Congress must be considered to have enacted the 1992 Cable Act knowing this decision and the statutory definition of "basic cable service" to be the law existing at the time it enacted the Act. See Norman J. Singer, Statutes & Statutory Construction § 22.35 4th ed. (1985).

In light of this legislative and judicial precedent, the Commission should not prohibit a cable operator from providing multiple tiers of basic cable service or a franchising authority from regulating such tiers. However, the Commission should not require that a cable operator offer multiple tiers of basic service. A

[Footnote continued on next page]

local broadcast stations (including those provided by a retransmission consent agreement), PEG channels, and any other video programming services a cable operator may wish to add to the basic cable service tier.³⁷ However, Congress intended for PEG channels to be on the basic tier absent franchise requirements obligating a cable operator to carry such channels on a different tier. Congress stated that "[w]ith respect to PEG access channels, it is not the Committee's intent to modify the terms of any franchise provision either requiring or permitting the carriage of such programming on a tier of service other than the basic service tier." House Report at 85.

Moreover, Section 611 of the Communications Act grants franchising authorities the flexibility to require the placement of PEG channels on other programming service tiers, or on a per channel or per

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number of cable systems offer only one tier of service, and then offer subscribers a number of per channel and per program offerings. This structure of offering services should not be prohibited.

³⁷ Congress intended for a cable operator to provide a tier of basic service pursuant to Section 623(b)(7)(A) and to comply with the buy-through prohibition in Section 623(b)(8) regardless of whether such cable system is subject to effective competition. The Commission's regulations should clarify that all cable operators must comply with these and other provisions in Section 623 that are not necessarily related to the regulation of a cable operator's rates.

program basis. The 1992 Cable Act does not infringe on a franchising authority's right to continue to regulate the placement of PEG channels pursuant to Section 611, nor does the Act's legislative history indicate that Congress intended to circumscribe a franchising authority's regulatory rights under Section 611.

D. Regulation of Cable Programming Services

1. The Commission Should Use a Benchmark Model To Ensure That Cable Programming Service Rates Are "Reasonable."

Local Governments agree with the Commission's conclusion that Section 623 obligates the Commission to establish criteria to govern the determination in an individual case of whether rates for cable programming service are "unreasonable" based on a balancing of the factors enumerated in Section 623(c) and other factors, and that the Commission should adopt a benchmark model for regulating such rates. Local Governments believe that the benchmark model chosen by the Commission should be the same as that adopted for the basic tier in order to ensure that rates are "reasonable" on both tiers, and that cable operators will not have an incentive to erode rate regulation by retiering or other means.

Local Governments do not believe that Congress intended the use of different standards of reasonableness for basic service and cable programming services. The fact that Congress requires that basic

rates be "reasonable" and that cable programming service rates not be "unreasonable" reflects nothing more than a recognition of the active role to be taken with respect to basic rates and the re-active role to be taken with respect to non-basic rates. Congress did not intend for this difference to mean that the rates for cable programming services should be regulated only if such rates meet some "egregious" standard, as suggested by the Commission. NPRM at ¶ 91 n. 127.

Moreover, the 1992 Cable Act's legislative history clarifies that Congress did not intend for a different standard of reasonableness to apply. In its discussion of rate refunds under Section 623(c), Congress states that "there will be a period of time between the filing of an unreasonable cable rate complaint and the Commission's determination of a reasonable rate." House Report at 87-88. The Senate Report states that, "for systems not subject to effective competition, the FCC shall establish reasonable rates for cable programming services . . . if it finds the current rates are unreasonable." S. Rep. No. 92, 102d Cong., 1st Sess. 74 (1992) (hereinafter "Senate Report").

2. Franchising Authorities Should Be Permitted To Conduct Initial Review of Rate Complaints.

Local Governments agree with the Commission's plan to devise complaint procedures "that are not only fair to all parties, but are also simple and expeditious." NPRM at ¶ 98. Local Governments believe the Commission could achieve this goal by utilizing franchising authorities to expedite Commission review of complaints. Use of franchising authorities to review complaints would also reduce administrative burdens on the Commission. Moreover, subscribers may find it convenient to have their rate disputes initially reviewed at the local level -- although a subscriber would retain its right under Section 623(c)(1)(B) to appeal directly to the Commission. Nothing in Section 623 or its legislative history prohibits the delegation of such regulatory authority to franchising authorities.

The Commission should permit franchising authorities, certified to regulate basic cable rates, to initially determine whether a rate increase for a cable programming service is unreasonable. Such review may be triggered by the franchising authority itself or by the filing of a subscriber complaint. The franchising authority must notify the cable operator that regulatory review has been triggered. The franchising authority then would apply whatever procedural rules it established for reviewing basic rate increases in

reviewing rates for other programming services -- subject to the additional procedural rules described below. Such procedural rules would ensure that cable subscribers and the cable operator have the right to present their views. However, the franchising authority would have to apply the benchmark regulations promulgated by the Commission pursuant to Section 623(c) in determining whether a rate is unreasonable and, if unreasonable, in establishing a reasonable rate.

A cable operator, or the cable subscriber filing a complaint, would have the right to appeal an adverse rate decision by the franchising authority, but would succeed in overturning the franchising authority's rate decision only if such entity demonstrated that the decision was arbitrary and capricious. The franchising authority's decision would be stayed pending any appeal.

3. The Commission Must Establish a Reasonable Time Period for the Filing and Review of Complaints.

A franchising authority, cable subscriber or other qualified entity wishing to file a rate complaint must have sufficient time to collect any data it might need to support its claim and to determine whether a cable operator's rate appears to be "unreasonable." Local Governments believe that 90 days after a subscriber receives the first bill reflecting a rate increase is a reasonable period after a rate increase

becomes effective to allow a person to file a complaint with the Commission, or with a franchising authority authorized to do an initial review of such a rate. Once such a complaint is received, the Commission (or a certified franchising authority) should have the same initial time period it has to review a basic rate -- 120 days -- to review such a complaint, and, if, for example, more information is needed to reach a decision, an additional 90 days to complete its review.

The Commission (or a certified franchising authority) should notify the cable operator that it is reviewing a complaint and provide the cable operator the opportunity to submit information, or require the operator to provide information if such financial information is necessary to review the complaint. A cable operator should bear the burden of demonstrating by a preponderance of evidence that its rate is not unreasonable. Such a burden is fair since the cable operator has possession of the information necessary to show that its rate is not unreasonable.

If the Commission (or a certified franchising authority) determines that a cable operator's rate is unreasonable, the Commission (or a certified franchising authority) should have the right to establish a

"reasonable" rate.³⁸ Congress intended that the Commission establish such a rate rather than giving the cable operator the opportunity to establish another rate. See Senate Report at 74; House Report at 88. Moreover, the establishment of a rate by the Commission, rather than allowing the cable operator to propose a rate (which would require further review by the Commission), would be consistent with the congressional mandate that the Commission reduce administrative burdens imposed by its rate regulations.

4. A Cable Operator Should Provide Refunds to "Actual Subscribers."

The Commission should require that the cable operator refund the portion of its rate deemed unreasonable during the period between the filing of a complaint and the date the rate is reduced by the cable operator. The Commission should require a cable operator to provide either an actual refund, or an additional reduction in rates (in addition to that ordered by the Commission) until the refund amount to which a subscriber is entitled is repaid. This refund should go to all cable subscribers who actually paid for

³⁸ Local Governments are not opposed to giving a cable operator up to 30 days to reduce rates after the Commission makes its decision, see NPRM at ¶ 108, so long as a cable subscriber's right to a refund continues up to the day that the cable operator actually reduces the rate.

cable service during this time period. Even if a cable subscriber terminates cable service during the time period the complaint was filed or during the refund period, the cable operator should be required to mail a refund to such former subscribers. Local Governments recognize that it may be more burdensome to require that a cable operator provide refunds to subscribers that actually subscribed to a programming service, rather than spreading the total refundable amount among current subscribers (regardless of whether they actually subscribed during the complaint period). However, such a result is required by Section 623(c)(2)(C), which requires the Commission to "refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable." (Emphasis added.)

Local Governments believe that cable operators should be required to certify that they have reduced rates and provided refunds as required by the Commission.

5. The Commission Should Craft Simple Complaint Forms that Require Only a Simple Showing to Trigger Regulatory Review of Cable Rates.

A complaint by a cable subscriber or franchising authority to the Commission (or a complaint by a subscriber to a certified franchising authority) should

be considered appropriate for review by the Commission if it simply shows that the rate charged by the cable operator exceeds the benchmark or price cap set by the Commission. In order to assist a cable subscriber in determining whether a cable rate exceeds the benchmark or price cap, a cable operator should be required to provide notice of any rate increase to the franchising authority and subscribers, and to include in such notice a side-by-side comparison of the cable operator's new rate and the benchmark rate, and of the amount of the increase and the amount of an increase allowable under the price cap, for that type of system. A complaint should also be appropriate for review if some other similarly simple showing is made (e.g., the rate increase is higher than the inflation rate).

As with a basic rate increase, a cable operator's notice also should inform a cable subscriber that it has the right to appeal a rate increase and inform a subscriber how to file a complaint with the Commission (or a franchising authority certified to regulate such rates) for the review of a rate increase. The cable operator should also be required to enclose with such notice a copy of any standardized form the Commission might create for the filing of such complaints.

The minimum showing a cable subscriber or franchising authority must make for a complaint to

proceed should not differ. Local Governments agree that if a complaint fails to make the requisite initial showing, the Commission should send the complainant an informational letter describing what the complaint should state and permit refiling within a reasonable time period. NPRM at ¶ 99. Local Governments also agree that the filing of the first complaint should toll any time limit on the filing of a complaint.

**6. The Commission Must Regulate Tiers
Composed of Premium Services.**

Local Governments believe that Section 623 requires the Commission to regulate a tier composed of premium services -- regardless of whether the rate for such tier is simply the total of all the per channel charges for such services, or a higher or lower rate than the total rate a subscriber would pay if such services were purchased individually. Moreover, the Commission obviously should regulate a premium service if it is part of a tier of non-premium services regulated pursuant to Section 623(b) or (c).

Section 623 only exempts programming offered on a per channel or per program basis from rate regulation, including programming offered on a "multiplexed" basis (e.g., HBO1, HBO2 and HBO3). The Commission should not interpret this exemption any more broadly, given its statutory obligation to protect cable subscribers from

unreasonable cable rates. Moreover, Congress stated that the purpose of the rate exemption for per channel and per program services was to promote consumer choice and competition: "Per channel offerings available to subscribers upon purchase of the basic tier can enhance subscriber choice and encourage competition among programming services." House Report at 90. This justification is not valid when such services are packaged just like any other tier of programming services.

E. Miscellaneous Rate Provisions

Local Governments offer the following comments on other provisions in Section 623 that are addressed in the NPRM:

a. Geographically Uniform Rate Structure:

Congress enacted Section 623(d) to "prevent cable operators from having different rate structures in different parts of one cable franchise. This provision is also intended to prevent cable operators from dropping the rates in one portion of a franchise area to undercut a competitor temporarily." Senate Report at 76. Hence, the requirement should not be interpreted to mean that the rate structure should be the same in each franchise area served by a cable system that serves multiple, contiguous franchise areas; the provision only requires that the rate structure within a franchise area

be "uniform." However, the requirement should not be interpreted to prohibit the establishment of reasonable categories of service with separate rates and terms and conditions of service, or reasonable discriminations in rate levels among different categories of customers -- provided that the rate structure containing such discriminations is uniform throughout a cable system's franchise area.

b. Discrimination: Congress intended that cable service be available to as many people as possible. As such, the Commission should not narrowly define the term "economically-disadvantaged groups." Persons that are considered "economically disadvantaged" varies from community to community. Rather than establishing a universal definition, the Commission should grant franchising authorities flexibility in determining whether a cable operator's discounts for such groups are consistent with the definition for such groups prevailing in a given jurisdiction, based on, for example, welfare eligibility, telephone or heating bill assistance, or some other measure a franchising authority deems appropriate.

Moreover, the Commission should clarify that, in addition to not prohibiting discounts, its regulations do not prohibit cable operators from creating tiers of service directed toward senior citizens and many

economically-disadvantaged groups, such as "lifeline" tiers of service that are required in many cable franchises. Although such tiers are created to attract such groups, the Commission's regulations should not prohibit any other subscriber that wishes to subscribe to lifeline-type tiers of service. In addition, the Commission's regulations should clarify that a franchise requirement that a cable operator establish a lifeline tier may be in addition to a cable operator's obligation to establish a basic tier under Section 623(b)(7).

Finally, the Commission should not adopt any regulations that would circumscribe the ability of a state or local government to adopt anti-discrimination regulations pursuant to Section 623(e)(1). Unlike other provisions in Section 623, Congress did not intend for the Commission to define the ability of such entities to enact such laws. Section 623(e)(1) plainly states that "[n]othing in this title shall be construed as prohibiting any . . . State, or a franchising authority from . . . prohibiting discrimination among subscribers and potential subscribers to cable service."

c. Collection of Information: Section 623(g) states that the Commission shall "require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer

Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section." Congress intended that all cable operators, not just a sample of cable operators, file this information on a yearly basis. It necessary for franchising authorities to have access to such information in order to determine whether a basic cable rate remains "reasonable." A franchising authority may not be able to determine whether a rate remains "reasonable" from year to year if it receives vital financial information only randomly, every few years. If the Commission believes that the collection by it of financial information by every cable operator on a yearly basis imposes an undue burden on it, the Commission should establish a requirement that obligates cable operators to send such information only to a franchising authority on a yearly basis, and that only a sample of such operators each year forward an additional copy to the Commission. Such a requirement is consistent with Section 623(g), which states that a cable operator should file such information "with the Commission or a franchising authority, as appropriate." (Emphasis added.)

d. Prevention of Evasions: In anticipation of the Commission's rate regulations, many cable operators

are increasing the rates for existing programming services. In addition, cable operators are retiering programming services, with the result that cable subscribers are paying more to receive the same programming they received before retiering.³⁹ These are clearly actions that may represent an attempt by a cable operator to evade rate regulation -- either by attempting to exempt recent rate increases from regulatory review once the Commission's regulations become effective, or by retiering programming services to minimize the impact of rate regulation.

In addition to rate increases and retiring since the 1992 Cable Act was enacted, the Commission should review other actions that may reflect an evasive intent, such as future retiering and the imposition of charges on subscribers for equipment, installation and services formerly provided to subscribers for free. However, given that addressable technology, video compression and other technological advances are revolutionizing the way cable operators are offering services, the Commission

³⁹ Independent of Section 623(h), Sections 623(b) and (c) clearly gives franchising authorities or the Commission the right to review such actions. Rate increases resulting from such actions on the basic tiers may be reduced to a "reasonable" rate. Moreover, the Commission may reduce the rates for other programming services in response to complaints filed in the first six months after the Commission's rules become effective.

should not attempt to compile an exhaustive list of actions that may be considered evasive actions. Instead, the regulations the Commission promulgates for the regulation of basic and other programming services should include a provision allowing franchising authorities to institute a rate regulatory proceeding to review actions by cable operators that may constitute an attempt to violate basic rate regulation, and to allow complaints to be filed that challenge actions by cable operators that may be an attempt to evade the Commission's regulation of cable programming services.

As with the review of its cable rates, a cable operator should bear the burden of demonstrating that its actions do not constitute an evasion under Section 623(h). In order to meet this burden, a cable operator should be required to show by a preponderance of evidence that its action was done predominately for a legitimate business purpose unrelated to any evasive effect, and not done solely on grounds of enhancing revenue.

If a cable operator fails to meet the burden of proof, the Commission must order appropriate remedies. In the case of rate increases imposed between the date the 1992 Cable Act was enacted and the effective date of the rules, Local Governments believe the Commission has the right to immediately roll back cable rates to where

they were on October 5, 1992 -- the date the 1992 Cable Act was enacted.

Local Governments agree with the Commission that the adoption of a parallel and uniform rate regulation regime for both basic service tiers and cable programming services might limit the incentive for operators to move services from basic tiers to other cable programming service tiers in order to evade rate regulation. Local Governments encourage the Commission to adopt such an approach.

e. Negative Option Billing: Local Governments agree with the Commission's conclusion that a cable operator may not take a subscriber's inaction following the operator's proposal to provide equipment or service as an affirmative request for such service or equipment. Local Governments agree that an affirmative request for such service or equipment may occur orally or in writing in order to give a subscriber flexibility in ordering.

Local Governments believe that if the cable operator violates the Commission's negative option billing regulations, it should refund any charges imposed on all subscribers as a result of such violations and be prohibited from collecting any amounts billed for such charges.

Local Governments believe that a cable operator should give a subscriber notice of all changes in tiers

or equipment, and of any change in rates as a result of such changes in tiers and equipment.⁴⁰ Moreover, such notice should be required even if a cable operator alleges that it is retiering simply to comply with the requirement in Section 623(b)(7)(A) that it establish a basic tier of service. The negative billing option should be applicable in such instances if: (1) the cable subscriber now pays more to receive on two tiers of service, programming that it previously could obtain on one tier, and (2) the cable operator creates two tiers from one tier of service and forces all subscribers to take the more expensive tier, while making the less expensive tier an optional service.

f. Small System Burdens: One of the Commission's goals in this proceeding should be to implement rate regulations that "reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission." Section 623(b)(2)(A). As such, these regulations may also meet the requirement that, for small systems, the Commission "design such regulations to reduce the

⁴⁰ Even if such changes are not changes subject to the Commission's negative billing option regulations, a subscriber still needs notice of such changes to ensure that a cable operator is in compliance with other rate regulations established by the Commission (e.g., rate evasion regulations established pursuant to Section 623(h)).

administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."

Section 623(i).

If the Commission determines that additional measures are necessary to reduce the burden on small systems, such measures should not be at the expense of the statutory command that the rates charged by such systems be reasonable. Therefore, small systems should not be totally exempt from the Commission's rate regulations. Congress did not intend to exempt such systems from compliance; rather, Congress simply instructed the Commission to reduce the burdens and costs of such compliance. Hence, under no circumstances should small systems be exempt from the Commission's substantive regulations. However, the Commission might reduce paperwork requirements or other procedural or administrative burdens on such cable operators, but only to the extent such reductions do not impact on the ability of the Commission and franchising authorities to regulate rates, and do not increase the regulatory burdens on franchising authorities regulating such cable systems.

The Commission also should ensure that only those cable systems that Congress intended to protect are granted small system exemptions. The purpose of Section 623(i) is to provide a simpler rate regulatory

structure for independently-owned, stand-alone cable systems serving 1,000 or fewer subscribers that is less costly and burdensome than the regulatory structure the FCC must establish for other cable systems pursuant to Section 623(b)(2). In order to ensure that Section 623(i) protects only its intended beneficiaries, the Commission should ensure that any regulations it adopts pursuant to Section 623(i) apply only to a cable system meeting the following criteria:

A small cable system for purposes of Section 623(i) includes any stand-alone cable system (including all headends of such system) that serves a total of 1,000 or fewer subscribers in the franchise area(s) in which it provides service; except that Section 623(i) does not include a cable system that: (a) serves a total of more than 1,000 subscribers in multiple franchise areas, even if one or more of the franchise areas has fewer than 1,000 subscribers; and (b) is directly or indirectly owned by a cable operator that directly or indirectly owns other cable systems, and the cable systems directly or indirectly owned by such a cable operator serve a total of 45,000 or more subscribers.

The definition clarifies that a cable system affiliated with an MSO is not entitled to Section 623(i) protection. Unlike small, independently-owned cable systems, a small cable system affiliated with an MSO has a variety of cost advantages over other independently-owned systems, such as, among other things, programming cost discounts and access to the corporate parent's

resources, which make it fair to require such a cable system to fully comply with the FCC's rate regulations. Moreover, the definition clarifies that a stand-alone cable system (including all headends of such system) that serves more than one franchise area and a total of more than 1,000 subscribers would not be entitled to Section 623(i) protection even if it serves less than 1,000 subscribers in any individual franchise area covered by the system. This clarification is required to prevent a stand-alone cable system that has thousands of subscribers and serves numerous franchise areas from claiming Section 623(i) protection in any one franchise area with 1,000 or less subscribers. Such an exemption from Section 623(i) protection is fair since many cable systems serving multiple franchise areas have a subscriber base that makes such cable systems financially and administratively capable of fully complying with the FCC's rate regulations. (E.g., Cablevision Systems Corporation states that it has a cable system in Bangor, Maine that serves 25,000 customers in 26 communities from nine headends, which amounts to an average of less than 1,000 subscribers per community.) Such a definition also ensures that similarly-sized cable systems will be treated similarly without regard to the number of "franchise areas" that are served by such systems.

g. Grandfathering of Rate Agreements: Local Governments agree that franchising authorities that regulate rates pursuant to grandfathered agreements are not required to comply with the Commission's rules. Local Governments do not believe such agreements should be interpreted to prohibit the Commission from regulating -- to the extent not inconsistent with the franchise agreement -- non-basic tiers that are not regulated by the franchising authority.

h. Effective Date: Congress intended for consumers to receive the rate protections in Section 623 expeditiously. Section 623 states that its provisions become effective 180 days after passage of the Act -- or by April 3, 1993 -- and that the Commission must adopt its regulations within the same time period. Congress clearly intended for cable subscribers to receive rate protections no later than April 3, 1993. Local Governments believe that it would be inconsistent with congressional intent if the Commission delayed the effective date of its rate regulations beyond April 3, 1993. It would be illogical to assume that Congress contemplated that although Section 623 would become effective on April 3, cable subscribers and franchising authorities would lack the ability to enforce key provisions in the Section until some later date.

The Commission's rules should become effective once they are promulgated. It is not unfair to immediately impose such rules on cable operators since they have known since October 5 -- the date Section 623 was enacted -- that they would have 180 days to comply with the Section and the Commission's rules. Many cable operators have already begun taking other steps in order to comply with the rules.

II. SUBSCRIBER BILL ITEMIZATION

The Commission's regulations should allow a cable operator that chooses to itemize costs pursuant to Section 622(c) to itemize only direct and documentable costs of franchise fees, PEG requirements or other fees, taxes and assessments imposed on the cable operator by a franchising authority, and should prohibit a cable operator from disclosing such costs in a misleading or overstated manner. Such regulations would be consistent with Congress' intention that a cable operator itemize

only direct and verifiable costs. A cable operator shall not include in itemized costs indirect costs. For example, a cable operator shall not include in the itemized cost of providing PEG channels the value of such channels if they were used for commercial purposes.

House Report at 86.

Moreover, the Commission's regulations should prohibit a cable operator from identifying itemized costs "as separate costs over and beyond the amount the